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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.258 OF 2002
WITH
CRIMINAL APPEAL NO.645 OF 2001
WITH
CRIMINAL APPEAL NO.177 OF 2002
AND
SUO MOTU APPLICATION NO.2 OF 2002

CRIMINAL APPEAL NO.258 OF 2002

Kamalakar Hambirao Shinde)
Convict No.B/31492)
Age about 49 years, Occ.: Service)
R/o. S.R.P.F. Group No.VIII, Daund)
District : Pune)
At present confined in Yerawada Central)
Prison, Pune 411 006.).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.Arfan Sait, Advocate appointed for the Appellant.

Smt.V.R. Bhosale, Additional Public Prosecutor,
for the Respondent.

WITH
CRIMINAL APPEAL NO.645 OF 2001

Dnyandeo Mohan Bhosale)
Age 43 years, Occ.: Service)
R/o. Pandharkar Chawl, Dalvinagar)
Chinchwad, Pune.).. APPELLANT

VERSUS

The State of Maharashtra)
Through Bund Garden Police Station).. RESPONDENT

None present for the Appellant.

Smt.V.R. Bhosale, Additional Public Prosecutor,
for the Respondent.

WITH
CRIMINAL APPEAL NO.177 OF 2002

Gafar Mohammed Shaikh)
Age about 34 years, Occ.: Service)
r/o Room No.193, Block No.3)
Swargate Police Line, Pune).. APPELLANT

VERSUS

The State of Maharashtra)
(On behalf of Bund Garden Police)
Station, Pune City in Crime No.147/88).. RESPONDENT

Mr.S.S. Kulkarni, Advocate, for the Appellant.

Mrs.P.H. Kantharia, Additional Public Prosecutor,
for the Respondent.

WITH
SUO MOTU APPLICATION NO.2 OF 2002
IN
CRIMINAL APPEAL NO.177 OF 2002

The Court on its own Motion).. APPELLANT

VERSUS

Gafar Mohammad Shaikh).. Respondent

Mrs.P.H.Kantharia, Additional Public Prosecutor,
for the Appellant.

Mr.S.S. Kulkarni, Advocate, for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.

DATED: 29TH AUGUST 2006

ORAL JUDGMENT : (PER MHATRE, J.)

. These three Appeals have been filed by the Accused who have been convicted by the Additional Sessions Judge, Pune for the offence punishable under Section 392 read with Section 34 and sentenced to suffer

imprisonment for two years and to pay a fine of Rs.10,000/- each. Suo Motu Application No.2 of 2002 is in respect of the notice issued to Accused No.2 to show cause why sentence should not be enhanced. Since the facts involved in the aforesaid Appeals and the Suo Motu Application are the same, all the matters are being disposed off together.

2. In this case, the Accused who were the employees of S.R.P. are alleged to have committed the offence for which they have been charged. It is the case of the prosecution that one Dinesh Deshpande, PW5, worked upto 1983 with one Vimalchand Oswal i.e. PW6. He was thereafter employed with the Postal Department. His erstwhile employer used to request him to work for him on holidays. Accordingly, on 8th May 1988, the complainant was requested to recover some amount for the company run by PW6 from certain traders. He left Pune by train, went to Kalyan, made the necessary recoveries of amount of Rs.98,000/- and returned to Pune by 5.00 p.m. He kept this money in a blue bag besides other articles. On arriving at Pune Railway station, the complainant collected his two wheeler from the stand and proceeded towards the place of PW6. On the way, an autorickshaw overtook him and stopped in front of his two wheeler thus requiring the complainant to halt. The accused were in the autorickshaw. They were all wearing

police uniforms covered by coloured shirts. They informed the complainant that they had received information that the complainant was a smuggler and, therefore, were following him from Kalyan (where the complainant had made the necessary recoveries for PW6). The accused then forced the complainant to get into the autorickshaw with the bag containing the cash. Accused Nos.1 and 2 travelled in the rickshaw with him, while Accused No.3 followed the autorickshaw, riding the complainant's two wheeler. The Accused No.2 then telephoned PW6 from Khadki Railway station informing him that the complainant had been arrested at Kalyan and that he should secure his release from Kalyan. The accused then threatened the complainant with dire consequences. They snatched the bag out of the complainant's hand and decided to accompany the complainant to meet PW6. The autorickshaw then proceeded to the area where PW6 resided as directed by Accused No.2. The complainant was in this autorickshaw with Accused No.1. On the way, Accused No.1 directed the autorickshaw driver i.e. PW3 to turn towards Pune Railway station. The vehicle stopped near the Pune Railway station Police Help Centre and Accused No.1 directed the complainant to pay the fare and he started running away from there. The complainant having got suspicious, caught Accused No.1 and took him to the police. Accused No.1, when questioned by the police,

disclosed his identity as well as the names of Accused Nos.2 and 3. Accused Nos.2 and 3 were then apprehended and brought to the police station. The bag containing currency notes worth Rs.98,000/- was recovered at their instance from the autorickshaw of PW3. A seizure panchanama was drawn up where the bag and its contents including the cash came to be seized. The clothes of the accused were also seized. The accused were then charged and the case was committed to Sessions.

3. The learned Advocate appearing for Accused Nos.2 and 3 submitted that the version of the complainant should not be believed. All the accused were employees of S.R.P. and, therefore, it would be impossible that they would commit such a crime. He contends that there are several flaws in the case of the prosecution and it has miserably failed to prove its case against the accused. The learned Advocate also contends that the identity of the accused has not been established by the prosecution and the accused have been falsely implicated in the present case. The learned Advocate has also submitted that the entire case of the prosecution is unbelievable since the incident has allegedly occurred on 7th May 1988 in the evening when the roads are crowded. He urges that if in fact the accused had compelled the complainant to part with his bag containing the cash, the complainant would in normal

circumstances have shouted or alerted the passers-by, rather than complying with the directions of the accused. He then points out that the evidence on record does not connect the accused to the crime and, therefore, the Appeal of Accused No.2 should be allowed. He also submits that there is no specific allegation against or role attributed to Accused No.2 and, therefore, his appeal should in any event be allowed. No identification parade was held and, therefore, the identity of the accused has not been established.

4. The learned Advocate appearing for Accused No.1 adopts the arguments made on behalf of the other accused.

5. Complainant i.e. PW5 has narrated the entire incident as it occurred on 8th May 1988. He has candidly disclosed that he was fooled into believing that the accused were police officers who were trying to apprehend him and therefore he had complied with each direction and request made by them. It was only on their return to Pune Railway station and Accused No.1’s attempt to flee from that place, that he became suspicious and took Accused No.1 to the police station after a minor scuffle. He was assisted by PW2, a fruit vendor, who was selling fruits in the vicinity.

6. PW2 has corroborated the evidence of the complainant with respect to the complainant having caught Accused No.1 when the latter was trying to run away. She has also stated that she was a little surprised that the complainant was asking for help to nab Accused No.1 who was dressed in a police uniform. Her testimony has not been shaken in the cross-examination. She has identified Accused No.1. PW5 has identified all the accused.

7. PW3 the autorickshaw driver who ferried the accused and the complainant to and fro from Pune Railway station, has been examined. However, he has been declared hostile and, therefore, his evidence is not very material.

8. The panch i.e. PW7 has been examined to depose with respect to the seizure panchanama. One of the items seized was the bag containing the cash. This recovery of the cash has been made at the instance of Accused Nos.2 and 3 as disclosed from the evidence from the Investigating Officer, PW8. This recovery, in our opinion, itself sufficiently proves the role played by the accused in the crime. The Investigating Officer deposed that Accused No.1 had sustained some injuries prior to his arrest. He had sent the accused to hospital for examination. Similarly, the complainant

also suffered injuries and he was also referred to the hospital for examination. These injuries lend credence to the evidence of the complainant where he states that there was a minor scuffle between him and Accused No.1 wherein Accused No.1 had given him fist blows.

9. In our opinion, the trial Court has correctly appreciated the evidence on record. There is no perversity in his judgment. We have perused the entire record and evidence led before the trial Court and have arrived at the same conclusion after reappreciating the same. We, therefore, confirm the judgment and order of the trial Court and dismiss the Appeals as well as the Suo Motu application.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)